

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 16, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP2336

Cir. Ct. No. 2016SC3189

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

MARY CAROL NORTUNEN,

PLAINTIFF-RESPONDENT,

V.

AL BISHOP,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
ANTHONY G. MILISAUSKAS, Judge. *Affirmed.*

¶1 HAGEDORN, J.¹ Al Bishop appeals from his judgment of eviction. He claims that the circuit court erred in denying his motion to reopen the case after he consented to the eviction. We affirm.

BACKGROUND

¶2 In 2012, Bishop's then-wife entered into a purchase-lease agreement with Mary Carol Nortunen's then-husband for a residence in Kenosha. Following Nortunen's divorce, she became the sole owner of the property. She requested the Bishops sign a new lease in her name rather than in her former husband's name. On February 20, 2015, Bishop signed a month-to-month lease agreement providing that rent payments of \$1000 per month were due on the first day of every month. On October 4, 2016, after Bishop failed to pay rent for both September and October, Nortunen gave him five-days' notice to pay the balance or vacate the premises by putting a hard copy of the notice in the mailbox of the Kenosha house.² At some point, Bishop moved out of the house but left all of his belongings.³

¶3 On October 10, 2016, Nortunen filed an eviction complaint and requested damages for the unpaid rent and damage to the house. Bishop filed a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The eviction complaint also averred that Nortunen both texted and emailed the notice to Bishop. Nortunen's reply to Bishop's counterclaim further alleged that Bishop had actual notice of the eviction because he responded to Nortunen's text message.

³ Though there is some disagreement as to when Bishop moved out of the house, the electric company told Nortunen that Bishop had failed to pay his electric bill and that the power had been shut off since August. Nortunen argued that this implied that Bishop had not lived in the house at least since August, and Bishop did not contest the assertion.

counterclaim asserting over \$31,000 in damages, primarily flowing from the payments his former wife made on the purchase-lease agreement with Nortunen's former husband. Bishop also requested damages flowing from overpayment of rent, the security deposit, compensation for snow removal and lawn care, and moving expenses.

¶4 At the eviction hearing on October 24, Bishop, appearing pro se, informed the court commissioner that he had already cleaned out the house and would be out permanently by the end of the day. He assured the court that Nortunen "can have possession of the house; that's not an issue." Thus, the court gave Nortunen possession "with the consent of Mr. Bishop." Both parties agreed that the matter of damages still needed to be tried and agreed to set a date for a civil trial. Before concluding, the court commissioner emphasized again that Nortunen could enter the premises "when [she] want[ed] to," and Bishop corrected, "After today." The court commissioner agreed by responding, "Well[,] make it tomorrow and [she] can go in." Bishop did not object further. The judgment for eviction was entered later that day.

¶5 Several days later, Bishop filed a preprinted form for a "motion to reopen" a default judgment. He checked the box on the form claiming that he was a defendant and a default judgment had been entered against him. The form further explained Bishop's belief that his "failure to appear or file an answer was for good cause" because the judgment "was entered after our appearance. The commissioner did not rule on my claim of improper service." In the space labeled, "If the case is reopened I will succeed because," Bishop wrote: "I did not occupy the property, I did not lease the property and 5 day notice was improperly delivered." In a handwritten note on the form, the court stated that the issue would be discussed at the damages trial.

¶6 The damages trial was held on November 14, 2016. The court addressed Bishop’s motion first. Bishop informed the court that he was not living on the property when the five days’ notice was sent. The court stated, “That doesn’t mean anything. That’s not a good reason to reopen.” Bishop then claimed the lease was invalid, which the court countered by pointing out that the current lease was signed and dated by the present parties. Finally, Bishop “beg[ged]” the court for relief because “the decision was made when we weren’t there,” and there was no explicit order for eviction at the earlier hearing. The court noted that Bishop was in court when the eviction was granted and held that the eviction would stand because Bishop’s “reasons to reopen the eviction [were] not valid.”

¶7 The trial proceeded without further mention of notice. The circuit court refused to hear any testimony relating to the original purchase lease, holding that it was irrelevant to any eviction proceeding under the current lease. The court found for Nortunen in the amount of \$1904.81. Bishop, still pro se, appeals the judgment of eviction.⁴

DISCUSSION

¶8 As a preliminary matter, although his brief is somewhat unclear, it appears that Bishop is challenging the circuit court’s denial of the “motion to reopen.” The form motion Bishop filed in the circuit court specifically applies to default judgments entered for failure to appear in small claims cases. *See* WIS. STAT. § 799.29(1) (outlining the procedure to reopen a small claims judgment). Despite Bishop’s contention that “the decision was made when [he was not]

⁴ Nortunen remains pro se as well.

there,” the record reflects that no default judgment was entered in this case. The court commissioner granted possession of the premises to Nortunen in open court, and thereafter entered a judgment to that effect.

¶9 As a default judgment was not entered against Bishop, the circuit court did not err in denying Bishop’s motion to reopen. After listening to Bishop’s arguments for reopening the case, the circuit court appropriately pointed out, “You were in court when [the judgment] was made.... [Y]ou told the commissioner that you moved your things out.... You moved out. The eviction’s going to stand.” Because Bishop consented to the judgment, his arguments for reopening the case were immaterial. Bishop’s apparent confusion about the record does not justify unwinding an eviction he clearly consented to.

¶10 If Bishop had filed an appropriate motion, such as a motion for relief from judgment under WIS. STAT. § 806.07,⁵ we would still affirm because Bishop’s three arguments lack merit. First, he argues that the circuit court should not have granted the eviction because he was not properly given five-days’ notice of the eviction by one of the methods described in WIS. STAT. § 704.21(1)(a)-(e).⁶ Second, he claims that Nortunen had no right to demand a new lease under the

⁵ WISCONSIN STAT. § 806.07 provides, in pertinent part, that “On motion and upon such terms as are just, the court ... may relieve a party or legal representative from a judgment, order or stipulation” for certain reasons, including “[m]istake, inadvertence, surprise, or excusable neglect;” “[t]he judgment is void;” and “[a]ny other reasons justifying relief from the operation of the judgment.”

⁶ Bishop also contends that he never received fourteen-days’ notice or twenty-eight-days’ notice. However, fourteen-days’ notice is not required where the landlord offers the tenant the opportunity to remedy the default and restore the tenancy. WIS. STAT. § 704.17(1). Twenty-eight-days’ notice under § 704.17 only applies where the tenant in a periodic tenancy is not in breach and the landlord is seeking to terminate the tenancy. However, Bishop does not contest that he failed to pay rent, so this section is not applicable.

terms of the original purchase-lease, and thus, the current lease is invalid. Additionally, Bishop argues that Nortunen should be responsible for her former husband's duties under the first lease, and Bishop should receive the damages owed to his former wife under that lease. Finally, Bishop contends that his divorce proceedings made it impossible for him to “disturb or dispose of” his former wife's belongings in the house.

¶11 The latter two arguments are undeveloped and can be addressed summarily. The circuit court did not err in declaring the arguments about the previous purchase-lease irrelevant to the eviction.⁷ Even if the purchase-lease was terminated improperly, Bishop offers no cogent argument challenging the validity of the current lease, which was signed and performed by both parties for over one year. We need not address undeveloped arguments. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Likewise, Bishop fails to develop a coherent argument explaining how his divorce proceedings are relevant to the eviction. Furthermore, he presented no court order to this court or to the circuit court establishing his claim that there was a conflict. Thus, we similarly disregard Bishop's third argument. *Id.*

¶12 Bishop's only developed argument—that he was not given sufficient notice of the eviction—fares no better. Although notice is a necessary element of an eviction, Bishop's voluntary appearance and submission to a judgment of restitution of the premises waived any argument that he was not properly given

⁷ Even if the purchase-lease was at issue here, Bishop has no standing to enforce it against Nortunen, as only the parties to a lease may enforce it. *Sussex Tool & Supply, Inc. v. Mainline Sewer & Water, Inc.*, 231 Wis. 2d 404, 409, 605 N.W.2d 620, 622-23 (Ct. App. 1999).

notice under the statute. *See State ex rel. Weisskopf v. Byrne Bros. Co.*, 185 Wis. 237, 239, 201 N.W. 372 (1924).

¶13 Thus, we affirm the circuit court's denial of Bishop's motion to reopen and thereby affirm his judgment of eviction.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

